TELLS THE FACTS AND NAMES THE NAMES

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Russian Liberals in their Theater of the Absurd

By Boris Kagarlitsky

Sometimes I feel sorry for Russian liberals. How difficult and unpleasant it must be to live in a world where everything doesn't behave quite the way it should. Imagine a scientist who, on a daily basis, watches as apples, falling from an apple tree, are shooting up into the sky, instead of falling on his head guided by the law of gravity... Thus is the Russian liberal. He knows full well that the effect of the perfect laws of the market and of capitalism is to ensure – consistently and continuously – universal happiness and prosperity; that private property guarantees the flowering of freedom; that success – under the umbrella of capitalism – is the assured companion of the best, the talented, the enterprising. But, consistently and continuously, in the real world we witness precisely the opposite.

Of course, the laws of the market economy, freedom of trade and the principles of capitalism cannot be doubted for a second. No matter what, capitalism is not guilty. It's people or circumstance – constantly and malevolently – that stand in the way of objective economic laws, hindering their realization. And, for some reason, invariably they succeed in this sabotage.

In regard to our own motherland, the fundamental thesis of the Russian liberal is that we do not have "genuine" liberal capitalism. When capitalism is real, everything must be flawlessly good. But because in real life, alas, too many things, even if not all, are abominably bad, ergo, this is not capitalism! Those guilty of thwarting the reign of pure capitalism are: the Soviet heritage, Russian national traditions, the Tatar yoke and Byzantine orthodoxy, Communist propaganda and

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The Second Battle of Gaza

Israel's Undermining of International Law

By Jeff Halper

"The stakes are high. What will happen to the Palestinians – or oppressed peoples everywhere – if Kasher & Co. succeed in striking the Principles of Distinction and Proportionality from international law? Imagine an entire world unprotected against occupation, invasions, exploitation and warehousing, a global Gaza!"

The Israeli attack on Gaza in December 2008/January 2009 was not merely a military assault on a primarily civilian population, impoverished and the victim of occupation and besiegement these past 42 years. It was also part of an ongoing assault on international humanitarian law by a highly coordinated team of Israeli lawyers, military officers, PR people and politicians, led by (no less) a philosopher of ethics. It is an effort with other governments whose political and military leaders are looking for ways to pursue "asymmetrical warfare", without the encumbrances of human rights and current international law, against peoples resisting domination and plunder of their resources and labor. It is a campaign that is making progress and should be be taken seriously.

Since Ariel Sharon was indicted by a Belgian court in 2001 over his involvement in the Sabra and Chatila massacres and Israel faced accusations of war crimes in the wake of its 2002 invasion of the cities of the West Bank, with its high toll in civilian casualties (some 500 people killed, 1,500 wounded, more than 4,000 arrested), hundreds of homes demolished and the urban infrastructure utterly destroyed, Israel has adopted a bold and aggressive strategy: alter international law so that non-state actors caught in a conflict with states and deemed by the states as "non-legitimate actors" ("terrorists," "insurgents" and "non-state actors," as well as the civilian population that supports them) can no longer claim protection from invading armies. The urgency of this campaign has been underscored by a series of notable setbacks Israel subsequently incurred at the hands of the U.N. In 2004, at the request of the General Assembly, the International Court of Justice in The Hague ruled that Israel's construction of wall inside Palestinian territory is "contrary to international law" and must be dismantled – a ruling adopted almost unanimously by the General Assembly, with only Israel, the U.S.A., Australia and a few Pacific islands dissenting. In 2006, the U.N. Commission of Inquiry concluded that "a significant pattern of excessive, indiscriminate and disproportionate use of force by the IDF against Lebanese civilians and civilian objects, failing to distinguish civilians from combatants and civilian objects from military targets," together with the harsh criticism of the U.N.'s Goldstone report on Gaza accusing the Israeli government and military, again, of targeting Palestinian civilians and causing disproportionate destruction, has made this campaign even more urgent.

Fortunately, it is an uphill battle. The thrust of just war theory, from which international humanitarian law draws,

"is to limit warfare, and in particular to regulate its conduct and scope. Wars between states should never be total wars between nations or peoples. Whatever happens to the two armies

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involved, whichever one wins or loses, whatever the nature of the battles or the extent of the casualties, the two nations, the two peoples, must be functioning communities at the war's end. The war cannot be a war of extermination or ethnic cleansing. And what is true for states is also true for state-like political bodies such as Hamas and Hezbollah, whether they practice terrorism or not. The people they represent or claim to represent are a people like any other (Margalit and Walzer, 2009)."

Protecting the lives, property and human rights of civilians caught up in warfare from the power and impunity of states is especially relevant in our age when, as British General Rupert Smith (2005) tells us, modern warfare is rapidly moving away from the traditional interstate model to what he calls a "new paradigm" – "war amongst the people" – in which "we fight amongst the people, not on the battlefield." A more popular term used by military people, "asymmetrical warfare," is perhaps more honest and revealing because it highlights the vast power differential that exists between states and their militaries and the relative weakness of the non-state forces confronting them.

Now, the issue of adapting laws and ethical approaches coming out of traditional interstate warfare to new forms of "asymmetrical warfare" is a legitimate and vital endeavor. As Judge Richard Goldstone indicated in the report of the United Nations Fact Finding Mission on the Gaza Conflict, "The Mission interpreted [its] mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law." Two prime issues of concern arise here: protecting *all* non-combatants finding themselves caught up in armed conflict, whether from state or non-state adversaries, and the degree to which non-state actors must be held accountable under international humanitarian law. Thus, the Goldstone Report, recognizing the limitations under which non-state actors operate, specified as well the obligation of Palestinian armed groups "to exercise care and take feasible precautions to protect the civilian population in Gaza from the inherent dangers of the military operations."

Common sense and justice argue against a symmetry of responsibility between heavily armed and coordinated state-sponsored armies... and non-state actors protecting their people.

Common sense and justice argue against a symmetry of responsibility between heavily armed and coordinated state-sponsored armies, able to exert enormous force in order to exercise effective control over a territory and its people (Israel over the Occupied Palestinian Territories, in this case), and the military weakness, financial constraints and fundamental difficulties of non-state actors protecting their people or creating a neutral "battleground" separate from its civilian populations (as in the case of the Palestinians). Nonetheless, even a certain implied symmetry introduced by the Goldstone committee, in which non-state actors possess legitimacy as "a side," is unacceptable to Israeli political and military leaders. This, despite the fact that, in 1960, the U.N. General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples endorsed the right of peoples to self-determination and, by extension, their right to resist "alien subjugation, domination and exploitation" – again, with the obligations set out by the Goldstone Report. Nor is the notion that states and their armies should be significantly constrained in their military actions by international humanitarian law acceptable to Israeli decision makers, political and military. They seek, therefore, to alter international law in ways that enable them – and, by extension, other states involved in "wars on terror" – to effectively pursue warfare among the people while eliminating both the legitimacy and protections enjoyed by their non-state foes.

This campaign is led by two Israeli figures: Asa Kasher, a professor of philosophy and "practical ethics" at Tel Aviv University, the author of the Israeli army's *Code of Conduct*, and Major General Amos Yadlin, former head of the IDF's National Defense College, under whose auspices Kasher and his team formulated the *Code of Conduct*, and today the head of Military Intelligence. And, Kasher vigorously asserts, it is completely appropriate and understandable that Israeli should be leading it. "The decisive question," he says,

> "is how enlightened countries conduct themselves. We, in Israel, are in a key position in the development of law in this field because we are on the front lines in the fight against terrorism. This is gradually being recognized both in the Israeli legal system and abroad. After the debate before the High Court of Justice on the issue of targeted killings, there was no need to revise the document [on the ethics of fighting terrorism] that Yadlin and I drafted even by one comma. *What we are doing is becoming the law.* These are concepts that are not purely legal, but also contain strong ethical elements.
>
> The Geneva Conventions are based on hundreds of years of tradition of the fair rules of combat. They were appropriate for classic warfare, where one army fought another. But in our time the whole business of rules of fair combat has been pushed aside. *There are international efforts underway to revise the rules to accommodate the war against terrorism. According to the new provisions, there is still a distinction between who can and cannot be hit, but not in the blatant approach which existed in the past. The concept of proportionality has also changed* (*Ha'aretz*, Feb. 6, 2009; italics added)...
>
> Customary international law accrues through an historic process. If states are involved in a certain type of military activity

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against other states, militias, and the like, and if all of them act quite similarly to each other, then there is a chance that it will become customary international law … I am not optimistic enough to assume that the world will soon acknowledge Israel's lead in developing customary international law. My hope is that our doctrine, give or take some amendments, will in this fashion be incorporated into customary international law in order to regulate warfare and limit its calamities."

In their assault on protections afforded to non-state actors and the populations that support them by international humanitarian law, Kasher and Yadlin go after two of the most fundamental principles of international humanitarian law: the Principle of Distinction and the Principle of Proportionality.

The Principle of Distinction, embodied in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, lays down a hard-and-fast rule: civilians cannot be targeted by armies and, on the contrary, must be protected. Article 3 of the Fourth Geneva Convention states: "Persons taking no active part in the hostilities … shall in all circumstances be treated humanely … To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: violence to life and person … and outrages upon personal dignity."

The Principle of Proportionality, embodied in the 1977 Protocols to the Fourth Geneva Convention (to which neither the U.S.A. nor Israel is a signatory, but which nevertheless, as customary law, binds them), considers it a war crime to intentionally attack a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage. "The presence within the civilian population of individuals who do not come within the definition of civilians," says Protocol I, Article 50 (3), "does not deprive the population of its civilian character."

Undermining these principles is, therefore, a key to what Kasher and Yadlin (2005) put forward as their "new doctrine of military ethics." It is based on privileging states in their conflicts with non-state actors and on giving them the authority to deem an adversary "terrorist," a term lacking any agreed-upon definition in international humanitarian law and one that obviously removes any legitimacy a non-state actors, so labeled, might otherwise have. Indeed, Kasher and Yadlin's "Just War Doctrine of Fighting Terror" is grounded on a tendentious definition of "terrorism," custom-tailored to legitimizing state policies and actions. We define an "act of terror," they write, "as an act, carried out by individuals or organizations, not on behalf of any state, for the purpose of killing or otherwise injuring persons, insofar as they are members of a particular population, in order to instill fear among the members of that population ('terrorize' them), so as to cause them to change the nature of the related regime or of the related government or of policies implemented by related institutions, whether for political or ideological (including religious) reasons."

Kasher and Yadlin's "Just War Doctrine of Fighting Terror" is grounded on a tendentious definition of "terrorism," custom-tailored to legitimizing state policies and actions.

By defining terrorism as "an act" carried out by an individual or organization, Kasher and Yadlin both de-contextualize and de-politicize the protracted struggles of non-state actors, including those of all peoples oppressed by state (and corporate) regimes. Although they admit a certain legitimacy to "guerilla warfare," by reducing a popular struggle to a series of discrete acts, they make it possible to label an entire resistance movement "terrorist" purely on the basis of one or more particular acts, with no regard to its situation or the justness of its cause. Once this is done, it is easy to criminalize non-state resistance, since terrorism is, in Kasher's words, "utterly immoral." When, for example, Palestinians or the Hezbollah attack Israeli soldiers on active duty, Kasher refers to these acts as "kidnapping" rather than "capturing" them.

This very language and approach also has the effect of privileging state actors because it implies that state actions are, by definition, legitimate and not "utterly immoral."

Just how self-serving the tendentious use of the concept "terror" can be is evident in Israel's own attempts to have the Iran Revolutionary Guards declared a "terror organization," even though, being an agent of a state, it would not fit into Kasher and Yadlin's own state/non-state dichotomy. What, then, should prevent the international community from naming the IDF and various covert Israeli agencies such as the Mossad or the Shin Bet (the General Security Services) as "terror organizations"? The Goldstone Report itself concluded that Israel's offensive against Gaza during Operation Cast Lead was "a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population." Cognizant of this contradiction, Kasher and Yadlin are careful to add a caveat: they define an act of terror as one carried out "not on behalf of any state."

Having de-legitimized state-defined "acts of terrorism," Kasher and Yadlin then go on to further legitimize state actions such as those taken by Israel against Hezbollah, Hamas or, indeed, all Palestinian resistance by invoking "self-defense" – again, a claim which, according to just war theory and Article 51 of the U.N. Charter, only a state can make. In order to do so, they begin the narrative of events leading up the attack on Gaza with what the "terrorist" organization alone had done, launching rockets on the town of Sderot and its vicinity. Nothing of the fact that the vast majority of Gazans are refugees from 1948, denied their right of return and deprived of all their properties and assets. Nothing of the occupation since 1967 and the deliberate de-development of the Gazan economy; nothing of the exclusion, since 1989, of Gazan workers from the Israel job market upon which they had been made dependent, and, thus, their subsequent impoverishment; nothing of the years of settlement, in which 7,000 Israelis lorded it over a million and a half Palestinians at a cost to the Palestinians of much in terms of their lives and livelihoods; nothing of the siege, illegally imposed since 2006, or of the transformation of Gaza into the world's largest open-air prison; nothing of the fact that until today much of the land of Gaza – and the sea – are off-limits to Palestinian farmers and fishermen; nothing of the fact that Gazans live in mud and sewage created by Israel's

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wholesale destruction of their infrastructure; nothing of the wasted lives of the young people; nothing of the fact that Hamas observed an 18-month cease-fire and was willing to extend it, until Israel broke it on Nov. 4, 2008, setting off the rocket attacks. Nothing, in short, which would call into question whether the assault on Gaza was genuinely an act of self-defense.

Indeed, the process of de-contextualization is a prerequisite to the ethics that Kasher offers as the basis of international morality, law, political practice and warfare. Rather than taking into account more than four decades of Israel's occupation over Gaza and the West Bank, in which the Occupying Power may be said to have at least a modicum of responsibility for what transpires, Kasher bases his entire moral justification on what Israel has done over the years on a disembodied "double effect" principle, according to which, "when we are seeking a goal that is morally justified in and of itself, then it is also morally justified to achieve it, even if this may lead to undesirable consequences – on the condition that the undesirable consequences are unavoidable and unintentional, and that an effort was made to minimize their negative effects." As if maintaining a belligerent occupation for almost a half-century is unavoidable and unintentional, and as if Israel actually took steps to minimize its negative effects.

This, then, sets up a hierarchy of priorities – indeed, "obligations" on states – that turn international humanitarian law on its head. The Principle of Distinction cannot be honored, Kasher and Yadlin argue, because "terrorists do not play by the rules." Nothing less is required than a fundamental "updating of the concept of war." "As we sought to try and formulate how to fight terror," Yadlin (2004) writes,

> "we understood that we were in a different kind of war, where the laws and ethics of conventional war did not apply. It involves not only the asymmetry of tanks … The main asymmetry is in the values of the two societies involved in the conflict – in the rules they obey …
>
> A new model of warfare – the counterterrorism war – requires a new set of rules on how to fight it. The other side is fighting outside the rules and we have to create new ethical rules for the international law of armed conflict. The duty of the state is to defend its citizens. Any time a terrorist gets away because of concerns about collateral damage, we may be violating our main duty to protect our citizens. We look for alternatives so as not to cause collateral damage, or to cause the minimum amount of collateral damage, but the main obligation is to defend our citizens."

Thus, says Kasher, in an area such as the Gaza Strip, in which the IDF does not have effective control, "the responsibility for distinguishing between terrorists and noncombatants is not placed upon [Israel's] shoulders, since it is not the effective ruler." Military commanders must, thus, place prime importance on achieving their military objectives, because this is what self-defense depends upon. Next in priority is protecting soldiers' lives – indeed, Kasher and Yadlin define soldiers as "civilians in uniforms," thereby eliding the principle of a state's duty to protect its citizens with its deployment of trained and armed combatants sworn to pursue its military aims. Only then does the army have to worry about avoiding injury to civilian noncombatants. "Sending a soldier [to Gaza] to fight terrorists is justified," writes Kasher, "but why should I force him to endanger himself much more than that so that the terrorist's neighbor isn't killed?" asks Kasher. "From the standpoint of the state of Israel, the neighbor is much less important. I owe the soldier more. If it's between the soldier and the terrorist's neighbor, the priority is the soldier. Any country would do the same."

"The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries."

Kasher introduces a radically new principle of distinction – that in territories where it does not exercise effective control a country does not bear the moral responsibility for properly separating between dangerous individuals and harmless ones – as if simply asserting it lends it the necessary authority. And this is, in fact, the point. "If you do something for long enough," says Colonel (res.) Daniel Reisner, former head of the IDF's Legal Department, "the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries … International law progresses through violations. We invented the targeted assassinations thesis [that extra-judicial killings are permitted when it is necessary to stop a certain operation against the citizens of Israel and when the role played by the target is crucial to the operation] and we had to push it. Eight years later, it is in the center of the bounds of legality." Or, as Kasher puts it, "The more often Western states apply principles that originated in Israel to their own nontraditional conflicts in places like Afghanistan and Iraq, then the greater the chance these principles have of becoming a valuable part of international law."

Even the attempt to distinguish civilians from combatants was abandoned in the assault on Gaza. According to another report in *Ha'aretz* (Feb. 3, 2010), "The Israel Defense Forces chose to risk civilians in Gaza in order to protect its soldiers during Operation Cast Lead, a high-ranking Israeli military officer told the British daily *The Independent* on Wednesday. The IDF officer claimed the traditional 'means and intentions' engagement principle – stating that a suspect must have both a weapon and a visible intent to use it before being fired at – was discarded during Israel's Gaza incursion in late 2008 and early 2009."

Does that mean that states cannot engage in terrorism? "We do not deny," Kasher concedes, that a state can act for the purpose of killing persons in order to terrorize a population with the goal of achieving some political or ideological goal." He then adds another crucial caveat: "However, when such acts are performed on behalf of a state, or by some of its overt or covert agencies or proxies, we apply to the ensuing conflict moral, ethical and legal principles that are commonly held to pertain to ordinary international conflicts between states or similar political entities. In such a context, *a state that killed numerous citizens of another state in order to terrorize its citizenry* would be guilty of what is commonly regarded as a war crime [italics added]."

Kasher's caveat – "a state that killed numerous citizens of another state in order to terrorize its citizenry" – apparently means that states can neither be accused of terrorism nor held accountable for war crimes arising out of killing or

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terrorizing civilian populations such as the people of Gaza, because the latter are not citizens of another state.

As for the Principle of Proportionality, that, too, is a casualty of Kasher and Yadlin's assault on international humanitarian law. Their alternative is what is known by the IDF as its Dahiya doctrine. Coming out of the second Lebanon war of 2006, in which Israel destroyed the Hezbollah stronghold of Dahiya in Beirut, the Dahiya doctrine states that attacks against Israel will be deterred by "harming the civilian population to such an extent that it will bring pressure to bear on the enemy combatants … through the damage and destruction of civilian and military infrastructures which necessitate long and expensive reconstruction actions, which would crush the will of those who wish to act against Israel" (Public Committee against Torture in Israel, 2009). According to the Goldstone Report, "The tactics used by Israeli military armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations. The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice."

It then goes on to quote the head of Israel's Northern Command, Gen. Gadi Eisenkott: "What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. …We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. …This is not a recommendation. This is a plan. And it has been approved." But here again, it is the assertion of a new version of the principle that is important. Thus, declares Kasher, the Principle of Proportionality does not have to do with inflicting civilian injuries, clearly excessive in relation to the anticipated military advantage, as the international community now thinks, but the exact opposite: "Proportionality is justifiability of the collateral damage on grounds of the military advantage gained."

The upshot of Kasher and Yadlin's "updating the concept of war" was clearly evident in the attack on Gaza. "When senior Israel Defense Forces officers are asked about the killing of hundreds of Palestinian civilians during the fighting in the Gaza Strip," *Ha'aretz* (Feb. 6, 2009) reported,

"They almost all give the same answer: The use of massive force was designed to protect the lives of the soldiers, and when faced with a choice between protecting the lives of Israeli soldiers and those of enemy civilians under whose protection the Hamas terrorists are operating, the soldiers take precedence. The IDF's response to criticism does not sound improvised or argumentative … And it operated there not only with the backing of the legal opinion of the office of the Military Advocate General, but also on the basis of ethical theory, developed several years ago, that justifies its actions.

"Sending a soldier [to Gaza] to fight terrorists is justified," writes Kasher, "but why should I force him to endanger himself much more than that so that the terrorist's neighbor isn't killed?"

Prof. Asa Kasher of Tel Aviv University, an Israel Prize laureate in philosophy, is the philosopher who told the IDF that it was possible. In a recent interview with *Ha'aretz*, Kasher said the army operated in accordance with a code of conduct developed about five years ago for fighting terrorism. 'The norms followed by the commanders in Gaza were generally appropriate,' Kasher said. In Kasher's opinion, there is no justification for endangering the lives of soldiers to avoid the killing of civilians who live in the vicinity of terrorists. According to Kasher, IDF Chief of Staff Gabi Ashkenazi 'has been very familiar with our principles from the time the first document was drafted in 2003 to the present.'

Kasher's argument is that in an area such as the Gaza Strip, in which the IDF does not have effective control, the overriding principle guiding the commanders is achieving their military objectives. Next in priority is protecting soldiers' lives, followed by avoiding injury to enemy civilians … Prof. Kasher has strong, long-standing ties with the army. He drafted the IDF ethical code of conduct in the mid-1990s. In 2003, he and Maj. Gen. Amos Yadlin, now the head of Military Intelligence, published an article entitled "The Ethical Fight Against Terror." It justified the targeted assassination of terrorists, even at the price of hitting nearby Palestinian civilians. Lt. Gen. Moshe Ya'alon, who was the IDF chief of staff at the time, did not make the document binding, but Kasher says the ideas in the document were adopted in principle by Ya'alon and his successors. Kasher has presented them to IDF and Shin Bet security service personnel dozens of times."

And yet, when challenged, the philosophy, ethics and principled argumentation of Kasher and Yadlin dissipate, and one is found in the same kind of emotional and half-baked discourse that typifies shouting matches in bars or on the street. When, for example, Uri Avnery challenges Kasher's reduction of the Gaza operation as merely a justified defensive reaction to "continued rocket attacks on Israel by the terrorist organizations in the Gaza Strip," Kasher retreats from his philosophical argumentation into personal attacks: "Nor is it a surprise," he writes, "that Avnery does not want us to use the term 'terrorists' to describe the Palestinians – with whom he identifies – because of these negative moral connotations. He himself does not wish to be morally tainted as someone who identifies with terrorists."

From here, Kasher abandons intellectual analysis completely and descends into mere personal opinion and unsupportable suppositions. "Some people claim that a peace agreement between Israel and the Palestinians would provide Israeli citizens with the best protection against rockets and missiles, suicide attacks, and other horrors of terrorism," he begins.

"It is true that a democratic state is required to seek peace agreements with neighboring states and peoples. However, the idea that it is possible to reach a political settlement with the Palestinians that would be upheld by Hamas, Islamic Jihad, and other terrorist organizations *is quite doubtful*. Even if we accepted the plausibility of such a claim, *it is all but certain* that rocket attacks on Israel would continue throughout the negotiations. In fact, they *would likely increase*. Leaving a state's citizens vulnerable to persistent threat is not morally justified by *the mere fact of* ongoing negotiations. Nor can the fact that negotiations are taking place justify avoiding the last-resort option after

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all alternative courses of action have failed … There are those who call on Israel to engage in direct negotiations with Hamas, in order to rid its citizens of the threats posed to them by rocket attacks and other kinds of terrorist activity. This argument warrants a similar response. From a moral standpoint, *demanding that Israel engage in direct negotiations with a terrorist organization that does not recognize its right to exist cannot be justified* (Kasher, 2009. Italics added)."

Apparently, this method is common when Israelis attempt to alter international humanitarian law in order to justify unjustifiable practices. A few years ago (April 15, 2005, p. 34), the *Up Front* weekend magazine of *The Jerusalem Post* published an interview with an Israeli "expert in international law" who, tellingly, chose to remain anonymous. This is what "the expert" said:

"International law is the language of the world and it's more or less the yardstick by which we measure ourselves today. It's the lingua franca of international organizations. So, you have to play the game if you want to be a member of the world community. And the game works like this. As long as you claim you are working within international law and you come up with a reasonable argument as to why what you are doing is within the context of international law, you're fine. That's how it goes. This is a very cynical view of how the world works. So, even if you're being inventive, or even if you're being a bit radical, as long as you can explain it in that context, most countries will not say you're a war criminal."

This is serious stuff. We are in the midst of the second battle of Gaza, a campaign not only to refute and defame the U.N.'s Goldstone Report and sanitize Israel's actions there but to change international humanitarian law in a way that protects the powerful states and their armies while removing the fundamental rights of the world's poor and downtrodden to resist. The stakes are high. What will happen to the Palestinians – or oppressed peoples everywhere – if Kasher & Co. succeed in striking the Principles of Distinction and Proportionality from international law? Imagine an entire world unprotected against occupation, invasions, exploitation and warehousing, a global Gaza. It would be a world that reflects current reality: everyone would be either an Israeli Jew, part of a privileged global minority whose main ethical responsibility is toward defending itself against "terrorists," or a Palestinian, part of an impoverished, occupied majority with no control over its resources or its future, who, nevertheless, carries responsibility for the well-being and security of its violent "zero-tolerant" masters.

Standing on the ramparts of international law to guarantee its integrity should be an integral part of the struggle against oppression everywhere. If the people of Gaza can become fair game, so can any of us. In terms of vulnerability, as well as solidarity, we are all, indeed, Palestinians. If international humanitarian law needs to be altered to take into account the rise of non-state actors in international conflicts – and here we should note the increased use of "outsourced" private military contractors by states and corporations, the emergence of "failed states," many of which combine state apparatus with criminal activity, and even the role played by NGOs – then it must be done in a way that continues to protect civilians and oppressed peoples against states, often their own. Kasher and Yadlin's assault on international humanitarian law, sponsored and legitimized by the Israel government "in the name of" other states engaged in so-called wars on terrorism, threatens to give powerful governments, their militaries and allied corporations a free hand in bringing about a global "order," friendly to their interests at the expense of the world's peoples.

"As long as you claim you are working within international law and you come up with a reasonable argument as to why what you are doing is within the context of international law, you're fine. That's how it goes. This is a very cynical view of how the world works."

Given what Michael Klare calls "the new landscape of global conflict" – state-initiated resource wars (initiated or fueled, it must be noted, primarily by the powerful *democratic* states that control the global economic system and account for more than 80 per cent of the world's arms trade, whose revenues reached $1.46 trillion in 2008) – the prospect of states free of the constraints of international humanitarian law should give us all pause. For, as it turns out, the sites of future wars are largely in the very areas where people – framed as "terrorists" – are resisting the plundering of their resources, neocolonialism, and their own permanent warehousing. These sites, Klare tells us, "will be places that harbor particularly abundant supplies of vital materials – oil, water, diamonds, minerals, old-growth timber – along with supply routes that connect these areas to major markets around the world. These regions will command attention from the media, dominate the deliberations of international policy makers, and invite the heaviest concentrations of military power … [They comprise] a wide band of territory straddling the equator."

Israel's attempt to globalize its legal, moral, political and military justifications for what it did – and continues to do – in Gaza, the West Bank and Lebanon should concern us all. Just as Israel used Gaza as a laboratory for tactics and weapons of "counterinsurgency" and urban warfare, so, too, it is attempting to export its "new doctrines" in a way that fundamentally compromises the well-being of people caught in conflicts worldwide. As Kasher and Yadlin write explicitly, "the proposed principles are meant to be justified and practically applicable under any parallel circumstances. Moreover, those principles are intended to be universal in an additional crucial sense … The different defense agencies of a democratic state that faces terror should follow principles that rest on universal moral grounds and on the professional and organizational ethical grounds related to each of those state agencies on its own, be it military, regular police, combat police or preventive intelligence."

In this sense, everyone resisting oppression is a Palestinian. The stakes involved in losing this second battle of Gaza are high, indeed. Israel's attempt to "globalize" Gaza imperils us all. **CP**

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KAGARLITSKY CONTINUED FROM PAGE 1

the disgusting barbarism of the public, a deficiency in diligence, and a surplus of bureaucracy. In sum, there are heaps of guilty reasons. However, axiomatically, capitalism is innocent.

Of course, after almost two decades since the beginning of the liberal reforms, of universal privatization and the discovery of markets, it is hard to insist that in Russia there is no capitalism whatsoever. But this real-life Russian capitalism – capitalism, as viewed by our liberal heroes – is somewhat "incorrect," exactly in the manner of Winnie the Pooh, who complained that the "incorrect bees" that had bitten him were making "incorrect honey." After hearing such talk for the twentieth or hundredth time, it is possible, naturally enough, to lose patience. But one should be more lenient, remembering that the REAL supremacy of capital in no way corresponds to the IDEAL concept of liberal capitalism that exists in the imagination of our interlocutor. Whether this ideal notion corresponds to any historical reality – maybe not Russian, but American, Belgian or Greenland, maybe not of the 21st but at least of the 18th century – doesn't cross the mind of our liberal interlocutor. He is as indifferent to concrete historical example as the German in the 19th century anecdote, who extracts "the pure idea of a camel" from the depths of his spirit.

The trouble is that this ideal liberal capitalism, as envisioned by our Russian Oblomovs, never existed, never could have existed, because it is contrary to common sense. As a result, there are constant embarrassments: many Russian emigrants in America complain that, over there, there is no capitalism whatsoever but visible everywhere socialism of the purest dye. And, of course, our liberals have no doubts that socialism rules in post-Thatcher Western Europe. In the same spirit, one of Estonia's leaders laments that "socialist" European Union prevents his small proud people from constructing a "genuine liberal capitalism." You want proofs of this madness? Be my guest! Estonia's liberals complain that Germans and Italians, saturated with "red" ideology, for some reason demand that Estonia tax profits. Is this not monstrous!

The crisis of the last two years has aggravated the intellectual disease of Russian liberalism to the extreme, transmuting it into its sharpest form. I became convinced in this – once again –when the editorial staff of an important domestic business TV channel invited me to discuss the World Economical Forum in Davos.

In and of itself, this invitation was a significant event. Two years ago, no one would even think about inviting such an expert as myself to the studio of the business channel. But crisis has provoked a taste for critical analysis. Of course, it is not necessary to investigate basic questions or to attempt some understanding of same. But to get a rounded picture, "critical voices" must be heard.

Of course, the basic tune is dictated by voices of a completely different nature. Lately, liberal Russian intellectuals are disturbed because of developments in the United States. Obama frightens them. It is only in America that liberalism can be leftist and politically correct. In our

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country, this is not acceptable. Our liberal immediately and honestly says what he thinks. He explains that it is not necessary to send humanitarian assistance to lazy savages on Haiti or to be sad about some unknown people in Africa. But, therefore, our liberal commentators categorically dislike the American president. First, because he is "black," and, in the second place, because he is "red." The latter thesis seems to them just as obvious as the former one. So, even now, being treated by tea right before the live-on-air appearance, I listen to the reasoning of my partner in the dialogue, the liberal economist, who explains to what extent Obama is dangerous. As it turns out, the American president has two sins. He is trying to increase the participation of the state in the economy and he attempts to limit state handouts to private business. Only an utter villain and enemy of society can try to limit banks' access to government money. But it is still more criminal to demand control of how banks use this money, to regulate their activities, and to limit the bonuses of their managers.

The recipe for saving the world is simple and obvious: give still more money to the people who led the world economy to the edge of total ruin and never ask them about how they are going to use this money. Usually, such conversations confuse me somewhat. But really, gentlemen, would you do exactly the same with your personal money? Give your money to those who already failed once, and even not request some accountability? Don't you think that this is a little risky?

Logic requires raising the simplest question. Either the market is an irreproachable, self-regulating system, and, thus, it is not necessary to beg for bailout money from the state but simply wait till this system heals itself. Or, maybe it is not. In that case, perhaps it is advisable to manifest somewhat less confidence in banks, corporations and their masters?

In response to my doubts – which, by the way, were expressed very carefully and politely – my interlocutor was sincerely amazed. "How can you mistrust people who gathered in Davos?" he complained. "After all, they are exactly those people who move the world economy

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At this point, I could not refrain from expressing fresh doubts. Somehow, it had always seemed to me that the people who move the economy forward are those who work, producing goods. After this observation, my collocutor's eyes bulged: what do workers have to do with this, what relation do they have to production? I acknowledge that after this question I, too, felt completely dumbfounded. While I was catching my breath and trying to understand if I was hallucinating, my interlocutor attempted a new and, as it seemed to him, decisive line of attack: "Are you, by any chance, a Marxist? Only a Marxist could come up with something like this!" Simple-heartedly, I agreed. Yes. Exactly so. Marxist.

Who could think that one word can have such a weighty effect? After hearing my "yes," my interlocutor suffered mental collapse: horror, mingled with distrust, suffused his countenance, as he had been exposed to a demon or a monster from outer space. And where? Right in the studio of the business channel!

Finally, we were called into the studio, where the discussion, directed by an experienced program host, was of a much smoother nature. I attempted to speak about systemic problems, which those mustered in Davos didn't want to resolve or even to discuss. I duly got the answer that the Davos leaders were quite right not to want any systemic analysis, because there are no systemic problems. The entire crisis is simply a random incident – as when a man walks, stumbles and breaks his foot. Now, the state must "treat and feed business" until it stands on its own feet. It is expensive, of course, but what will you do, there is no other way out. Poor business! Poor visitors to Davos! Unfortunate cripples and invalids! The liberal economist reacted very simply to any doubts about the rightness of his theses. Is the World Trade Organization useful? Undoubtedly. Yes, there are other opinions, "but they are incorrect." Because they are not correct, we are not going to discuss them. "Bubbles" on the financial markets? Where did you get this idea from? There are no "bubbles" whatsoever. The dialogue began to resemble a scene from the theater of absurd. Fortunately, this continued for not too long. The session approached its end. I could not wait to leave the studio as quickly as possible. My partner in the discussion evinced similar discomfort.

Saying goodbye to me, the program host attempted to smooth out the unpleasant impression of the discussion. "You were speaking so convincingly," he reasoned. "So argumentatively. It is incomprehensible why he called you a Marxist?" – "But I am, actually, a Marxist," I said. He did not believe me. I left the studio for the freezing street and ran to the metro. I wanted to leave this place somewhat rapidly. The theater of the absurd is good, on a stage. In real life, it causes depression. **CP**

Translated by Alevtina Rea.

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